IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1517 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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AMARSINH MERUJI THAKOR

Versus

DIST MAGISTRATE

Appearance:

1. Special Civil Application No. 1517 of 2001

MS DR KACHHAVAH for Petitioner No. 1

Mr. H.L. Jani, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 25/07/2001

ORAL JUDGEMENT

Heard learned advocate Ms. Kachhavah for the petitioner and the learned AGP Mr. Jani for the respondents. In this petition under Article 226 of the the Constitution of India, the petitioner has challenged the impugned order of detention dated 3.1.2001 actually executed on 4.1.2001 passed by the detaining authority whereunder the petitioner has been ordered to be detained at the District Jail at Baroda as Class II detenu. According to the grounds of detention communicated to the petitioner under section 9(1) of the Gujarat Prevention of Anti Social Activities Act, in all, five offences have

been registered against the petitioner under the provisions of the Bombay Prohibition Act wherein last offence registered is dated 9.11.2000 and the impugned order of detention has been passed by the detaining authority 3.1.2001. No statements of the secret witnesses have been recorded by the detaining authority. Representation dated 12.1.2001 was made by the petitioner demanding for supply of certain documents from the detaining authority but no reply has been given by the detaining authority and no documents have been supplied to the detenu as per his representation dated 12.1.2001. By letter dated 19.2.2001, the petitioner was informed that the said representation has been rejected by the State Government on 18th January, 2001. Said representation was received by the detaining authority on 15.1.2001 and it was immediately forwarded to the State Government on 17.1.2001 and rejected by the State Government on 18.1.2001 which decision was communicated to the petitioner by communication dated 19th February, 2001. Thus, there was delay in communicating that his representation has been rejected by the State Government. No reply has been filed by the respondents to the present petition.

2. Learned advocate Ms. Kachhavah has raised various contentions while challenging the impugned order of detention. However, according to her, one contention is enough for quashing the impugned order of detention. According to her, vide representation dated 12.1.2001, the petitioner has demanded for copies of the FSL Report Specific contention to that effect has been raised in the memo of petition. She has submitted that the representation made by the petitioner to the detaining authority has not at all been considered by the detaining authority and no reply has been given by the detaining authority and no copy of the FSL Report has been supplied to the petitioner though the same was relied upon by the detaining authority though it was forming part and parcel of the grounds of detention. She has further submitted that the decision of the State Government on the representation of the petitioner dated 18.1.2001 was communicated to the petitioner by the respondents vide communication dated 19.2.2001 that his representation for supply of copy of FSL report has been rejected by the State Government on 18.1.2001 and, therefore, there is delay in communicating the decision on representation. Therefore, according to her, on two counts namely non supply of the document forming part and parcel of the grounds of detention namely FSL Report as well as on the another count of delay in communication of the decision on the representation, the impugned order of detention is

required to be quashed and set aside. According to her, it has deprived the petitioner from making an effective representation against his detention and this has, therefore, infringed Article 22(5) of the Constitution of India. She has further submitted that the copy of the FSL Report demanded by the detenu as per her representation dated 12.1.2001 was not supplied to the detenu. According to her, delay in communicating the decision of the State Government about the rejection of representation has adversely vitiated the continued detention of the detenu. She has submitted that the documents forming part and parcel of the grounds of detention were initially not supplied to the detenu which would amount to non communication of grounds and for which representation dated 12.1.2001 was made and inspite of such representation, the documents namely copy of the FSL report has not been supplied to the detenu. In support of these contentions, she has placed the reliance on the decision in case of M. Ahmedkutty v. Union of India, reported in 1990(2) SCC 1. She has also relied upon the decision reported in 2000(2) GLR 1767.

Learned AGP Mr. Jani has submitted that the relevant documents were supplied to the detenu when the demand was made. According to him, there were compelling circumstances for booking the petitioner under the provisions of the PASA Act as the activities of the petitioner were adversely affecting the maintenance of public order. He has submitted that in view of these facts, this Court should not interfere with the impugned order of detention.

I have considered the submissions of the learned advocates for the parties. I have also considered the contentions raised by the petitioner in the petition. By representation dated 12.1.2001, specific demand was made by the petitioner for supply of the FSL Report in respect of the registered offences which was not supplied to the detenu alongwith the grounds of detention. Said request for supply of the copy of FSL Report has not been considered by the detaining authority and no reply has been given to the petitioner. Said representation was forwarded by the detaining authority to the State Government and the State Government in turn rejected it on 18.1.2001 but such decision was communicated to the detenu on 19.2.2001. I have considered the contentions raised by Ms. Kachhavah in this regard that non supply of such documents would amount to non communication of ground and delay in communication of the decision about rejection of representation by the State Government would vitiate the continued detention of the detenu. It should

be noted that the copy of the FSL Report which was forming part and parcel of the grounds of detention was not supplied to the detenu inspite of specific representation to that effect and no explanation has been submitted by the respondents in that regard before this Court. As per my view, this has deprived the petitioner from making an effective representation and delay in supply of such document has vitiated the continued detention of the detenu.

In Mohd. Zakir v. Delhi Administration, [1982] 3 SCC 2 16, it was reiterated by the apex Court that it being a Constitutional imperative for the detaining authority to give the documents relied on and referred to in the order of detention pari passue the grounds of detention, those should be furnished at the earliest so that the detenu could make an effective representation immediately instead of waiting for the documents to be supplied with. The question of demanding the documents was wholly irrelevant and the infirmity in that regard was violative of Constitutional safeguards enshrined in Article 22(5).

Para 12 of the decision reported in 2000(2) GLR 1767 reads as under:

"12. Thus, the correct legal position, which emerges from the aforesaid decisions is as under:

(i) Failure to furnish the copies of the documents to which only a reference or a casual or passing reference was made in the grounds of detention is not an infringement of Art. 22(5), fatal to the order of detention.

(ii) While a distinction has to be maintained between a document which has been relied upon by the detaining authority in the grounds of detention and a document which finds a mere reference in the grounds of detention, non supply of the copy of the documents relied upon in the grounds of detention is fatal to continue the detention and in such cases the detenu need not to show that any prejudice is caused to him. Non supply of such a document would amount to denial of right of being communicated the grounds and of making an effective representation against the order.

(iii) When the detenu was already on bail at the time when the detention order was passed, the detaining authority has to necessarily rely upon the bail application and the order granting bail

as that would be a vital ground for ordering the detention and in such cases, the copies should also be supplied to the detenu.

(iv) What applies to a document would equally apply to furnishing translated copy of the document in the language known to and understood by the detenu, should be the document in a different language."

Therefore, in view of the non supply of the copy of the FSL Report which was forming part and parcel of the ground of detention and also in view of the delay in communication of the decision about the rejection of the representation by the State Government as discussed above, right of the detenu to make an effective representation under Art. 22 (5) of the Constitution of India has been adversely affected and, therefore, in view of the aforesaid two decisions, the impugned order of detention is required to be quashed and set aside.

In the result, this petition is allowed. Impugned order of detention dated 3.1.2001 actually executed on 4.1.2001 passed by the detaining authority is quashed and set aside. The detenu Amarsinh Meruji Thakor who has been detained in Baroda Jail is ordered to be released forthwith if he is not required in any other case. Rule is made absolute accordingly with no order as to costs. DSP.

25.7.2001. (H.K.Rathod,J.)
Vyas